

COMMONWEALTH OF AUSTRALIA

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Family Name	
Given Names	
Student Number	
Teaching Period	Semester 2, 2015

FINAL EXAMINATION	DURATION
LWZ116 – Torts	Reading Time: 30 minutes Writing Time: 120 minutes

INSTRUCTIONS TO CANDIDATES

This is an OPEN BOOK exam. Students are permitted to write on scrap paper during reading time.

The examination has 2 sections, of unequal value:

	Question Type	Suggested Time
Question 1: A Regrettable Retreat	Problem Question 1 – 60%	70 minutes
Question 2: A Chilli Reception	Problem Question 2 – 40%	50 minutes

- Note that questions are of **unequal** value – please ensure that you allocate your time accordingly
- Do not commence writing until instructed to do so.

EXAM CONDITIONS

This is an OPEN BOOK examination

No calculators are permitted

Any handwritten material is permitted

Any hard copy, dictionary is permitted (annotated allowed)

Answer on the supplied examination material/s only

ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED
Any printed material with the exception of CDU Library books	2 x 20 Page Book

**THIS EXAMINATION IS PRINTED
DOUBLE-SIDED.**

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QUESTION 1: A REGRETTABLE RETREAT

This question is worth 60% of the marks of this exam. It is suggested that students spend 70 minutes on it.

As part of the government's efforts to 'Develop the North', concerted efforts were made to create new tourism industries in the Northern Territory. Aware of the ability of the beauty and natural majesty of some of the national parks in the area to attract tourists from around the world, a developer, Zander, put together an audacious and controversial plan to build a boutique luxury resort in the Litchfield National Park. Zander identified the stunning location of Lincoln Falls, a large waterhole fed by a cascading waterfall, as the preferred location. His proposal involved the development of an ultra-luxurious 'eco-resort', with a premium restaurant serving bush-inspired cuisine, a spectacular bar area, and the creation of a 'beach' area on the waterhole enabling the guests to swim in the pristine waters. He plans to employ the best chefs and staff for the resort, including guides for nature walks and rangers to patrol the area to ensure it is safe for guests. Lincoln Falls is in a remote part of the National Park, and is historically rarely utilised by tourists. Nevertheless, the idea of building a commercial operation in the Park is vehemently opposed by local conservationists, led by self-styled 'eco-warrior' Silvan, who wish to preserve the untouched aspects of the Park. Zander is, however, a master lobbyist, and manages to convince the relevant authorities that the economic benefit and prestige of such a development outweighs such concerns. Approval is granted in December 2013 for the development, and building begins soon thereafter. While Zander is the principal investor, he seeks other investors for the project, including Michael. In October 2014, Zander launches 'Pandanus Lodge' to great fanfare, inviting visitors to 'indulge and immerse yourself in nature'.

Silvan is outraged by the entire process, and when his campaign of letters to the editor and posters fails to have any effect in stopping the opening of the Lodge, decides to escalate his protests. On the morning of the official opening, 17 October, Silvan snuck onto the property and ran a chain across the entrance gate. He then chained himself to the gate. When the first staff arrived they found they could not gain access to the property, and for over two hours Silvan managed to delay proceedings. Zander repeatedly asked Silvan to leave, but Silvan spat in his face. Eventually, Zander ordered his security officer to cut the chain and remove Silvan from the property. Silvan was roughly man-handled off the property, and left bleeding from the arm with several large bruises. As he was escorted away he screamed that Zander had not heard the end of it. By 8:30am the protest appeared to be over, and the opening proceeded.

Silvan was greatly aggrieved, and over the next week plotted his revenge. On the night of the 26th of October, Silvan snuck onto the property and over the course of a few hours dumped half a ton of fish heads on the 'beach' overlooking Lincoln Falls. The protest was discovered in the morning, and it took Zander the full day to arrange removal and clean-up, with much of the waste washed into the waterhole. Zander decided against the temporary closure of the Lodge, and soon had everything operating as normal. He assured his guests that there was nothing to worry about, and that they should relax in the safety and tranquillity of the Lodge.

On the 1st of November, Peter and his wife Jane arrived at the Lodge for a 3 day getaway. Jane works for Tourism NT, and had been heavily involved in promoting the development. By way of thanks, Zander provided a complimentary bottle of Veuve Clicquot for the couple to enjoy on the deck. After enjoying their champagne and canapés, Jane and Peter moved to

the restaurant where they had a delightful 'degustation menu' dinner and shared several bottles of wine. The next morning, feeling slightly worse for wear, Peter headed for a swim in the waterhole. Jane, who was feeling hearty and hale, decided instead to go for a two hour hike around the park. While Peter was swimming, he suddenly felt a pressure and pain on his leg and he screamed out. A very large freshwater crocodile had a hold of his leg. He kicked wildly, and poked at its eyes. For a brief moment it slackened its grip, and Peter managed to pull his leg free. He managed to make it to shore, but he was bleeding profusely and his leg was very badly mangled. The staff administered first aid, and an ambulance was called to rush him to hospital. While the injury was stabilised, it was a long trip back Darwin. The ambulance driver, Steven, and his assistant were engaged in a political discussion, which was becoming increasingly animated, when a kangaroo jumped in front of the ambulance. Steven over-corrected and the ambulance spun off the road and collided with a tree. Peter's injured leg was crushed in the accident. He was eventually transported to hospital safely in a second ambulance. Jane returned from her hike shortly after the crocodile attack, and saw the blood all over the landing. She jumped into her car to drive to Darwin. On her way she saw the first ambulance crashed off the side of the road, though did not at the time realise that her husband had been involved.

The authorities shut down Pandanus Lodge to investigate the event. It was established that the crocodile had been attracted by the fish heads which had been washed into the waterhole, and had crossed 200m across land from an adjacent river. Zander had not sought advice in cleaning up the fish heads, nor in making his reassurances to his guests. While the Lodge was permitted to re-open in late December 2014, the bad publicity has meant that it is now struggling.

Peter's leg, which had circulation troubles from an accident in his youth, was so badly injured as a result of the two incidents that it had to be amputated. Without the pre-existing injury, it may have been possible to save the leg. The thought of her husband being attacked, and of his subsequent accident, has severely traumatised Jane. She has begun to have nightmares and panic attacks following the incident, and has become withdrawn and morose. Jane has developed a pathological fear of crocodiles, and cannot continue her work in Tourism NT.

These events see the value of the business collapse. Michael is furious, as he stands to lose nearly half a million dollars. When Zander had initially proposed the investment, Michael had stated his concerns over guest safety. Over the course of a meal Zander had reassured him that there was nothing to worry about. He stated that he had sought advice and reports from a wide range of experts who had all unanimously assured him of the safety of the resort. Michael has since discovered that the only report was provided by 'crocodile wrangler' Jim Munde, who had been compensated with a carton of beer.

Please advise Michael, Zander, Silvan, Peter and Jane of any tortious claims they may have against any of the parties, whether in negligence or otherwise (assume that Steven is immune from liability).

QUESTION 2: A CHILLI RECEPTION

This question is worth 40% of the marks of this exam. It is suggested that students spend 50 minutes on it.

Bill lives in Berry Springs, where he runs a large mango plantation. He has lived in the area for twenty years, and is particularly attracted to the quiet environment and clean country air. To his great chagrin, the recent years have seen many people and businesses moving to the area, including a new pub and shops. In January 2014, the block next to his was purchased by Sam, who immediately started clearing the land and planting a large crop of chillies. In August that year, Sam started constructing a large shed on the boundary of the property next to Bill's land. Sam's business plan was to produce on a commercial scale hot chilli sauces in the shed, using his estate grown chillies. Bill was furious, as he feared not only the increased noise, but the smells and fumes that might be produced. By November, his fears had been realised as, with the factory in full production, the smells emanating onto his land were overwhelming. Whenever Bill worked on the plantation on that side of his property he was forced to wear a mask. His wife Zelda, who has always had an incredibly low tolerance to hot food, is now struggling to sleep.

In late November, Bill was out on the edge of his property when Sam strolled past walking his dog. Bill realised that Sam had strayed on to his property, and the dog was relieving himself against a tree. Bill yelled at Sam 'You have ruined the air, now you sully my soil – get off my land you lout.' Sam looked up with a mischievous grin and yelled back 'Take a chill pill old man – if I could bottle a temper like yours I would have no need for chilli!' Bill grabbed an armful of mangos and started throwing them at Sam. Sam managed to dodge the mangos, but a particularly ripe one hit the tree he was standing next to and exploded, covering him in juice and pulp. Sam scampered away to the safety of his shed.

Over the next week, particularly noxious gases emanated from the shed. On the weekend following Sam launched his new product: 'Old Farmer Bill's Crazy Sauce', a mango and chilli sauce made using only the hottest of chillies. Bill was furious. He decided to get revenge for the smells and the slur by smoking Sam out. Bill had always burned off clippings from his plantation on the far side of his property. He decided to move his fire until it was immediately adjacent to the chilli factory. In December he started burning off materials constantly. At first, Sam tolerated the smoke as an annoyance. However, after two weeks he noted that it was starting to affect his production. More troublingly, the thick smoke was starting to cause damage to his air conditioning unit and his computing equipment. Sam sent Bill an email asking him to stop, but Bill responded saying that he had always burnt off at this time of year, and that Sam should have thought of that before he moved to the area. Angry words were exchanged in the emails, but nothing changed.

Unfortunately, Bill had not adequately cleared the area around his new burning off area, and on the 20th of December, a spark from the fire lit some nearby brush, and quickly spread onto Sam's property. A quarter of Sam's chilli crop was destroyed, and the fire was soon licking against his shed. Fortunately, several neighbours had firefighting gear and were quickly at the scene, dousing the fire and seeking to contain it. James, who had only recently put a firefighting unit on his ute, arrived just as the fire caught on the shed, and quickly began watering down the fire. The fire on the shed was soon put out after causing some structural damage. James turned his attention to mopping up remnant fires. Unfortunately, James did not notice that he had left a hose near the shed, and that water was flowing freely from the

hose. Within 5 minutes, it had emptied the entire tank of water into the shed, causing extensive flooding damage.

Despite warnings from the police to avoid the area, Sam returned to his shed the next day to pick through the wreckage of his shed and survey the damage. As he was inspecting the area that had burnt, an ominous creaking sound was heard. The combination of fire plus flooding has weakened the structural integrity of the building, and with that creak the section of the shed in which Sam was standing suddenly collapsed. Sam leapt clear, but his leg was caught in the rubble, breaking his ankle. As he was laying in the rubble, his arm knocked against some still smouldering coals, and he suffered serious burns on his lower arm.

The entire situation has become a scandal in the area, and in the interest of bringing peace to the neighbourhood, the local council has asked the neighbours to attempt mediation. As part of this process the council has commissioned you to provide an analysis of the tortious liability of the parties involved, whether in negligence or other actions, as well as any available defences.

Please provide an advice regarding any possible tortious claims, or liabilities of the parties involved.